24763 No. 916 LIBRARY SUPREME COURT

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 24763

CARGILL, INC.,

Libelant-Appellee,

—against—

TUG FRANK A. LOWERY and FRANK A. LOWERY,

Claimant-Respondents,

TUG ELLEN S. BOUCHARD, MOTOR TUG ELLEN S. BOUCHARD, INC., and BOUCHARD TRANSPORTATION CO., INC.,

Claimant-Respondents-Appellants,

—and—

INLAND SURVEY BUREAU, INC.,

Respondent-Impleaded-Appellee.

APPENDIX FOR APPELLEE

UNITED STATES COURT OF APPEALS FILED OCT 23 1957 SECOND CIRCUIT

ATKINS & WEYMAR
Proctors for Appellee

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United States District Court

NORTHERN DISTRICT OF NEW YORK

Civil No. 5017

[SAME TITLE]

Final Decree Dated June 17, 1957

An interlocutory decree on mandate having been entered in this cause on March 19, 1956, and the matter of libellant's damages having been referred to A. Franklin Mahoney, Esq., Commissioner, to ascertain and compute the amount of same, and to report thereon to this Court with all convenient speed, and said report having been duly filed herein, and exceptions having been taken by both parties to said report, and the Court having heard said exceptions and having rendered and filed its opinion on June 4, 1957, and having determined that libellant recover its damages in the sum of $75,527.67, with interest and costs, in accordance with the interlocutory decree, and an order having been entered herein disposing of the said exceptions, pursuant to the aforesaid decision, on June 17th, 1957, and the costs of the libellant having been taxed in this Court in the sum of $3,461.70, and the costs of the libellant having been taxed in the Court of Appeals, as appears by the mandate filed herein, in the sum of $136.80, and the costs in this Court, of respondent-impleaded Inland Survey Bureau, Inc. upon the dismissal of the impleading petition against it having been taxed in the sum of $35.50, and the costs of said respondent-impleaded in the Court of Appeals, as appears by the mandate herein, having been taxed in the sum of $129.87,

Now, on motion of Jay S. Caplan, Esq., and Atkins & Weymar, Esqs., proctors for libellant, it is

Final Decree Dated June 17, 1957

ORDERED, ADJUDGED and DECREED that libellant, Cargill, Inc., recover of and from the tug ELLEN S. BOUCHARD and her claimant and stipulators for value and costs, and Motor Tug ELLEN S. BOUCHARD, Inc., and its stipulators for costs, and Bouchard Transportation Co., and its stipulators for costs, its damages in the sum of $75,527.67, with interest thereon from the date of the loss, September 25, 1953, to the date of this decree amounting to the sum of $16,889.22, and costs as taxed in libellant's favor in this Court in the sum of $3,461.70, and as taxed in the Court of Appeals in the sum of $136.80, making in all the total sum of $96,015.39, and that libellant have execution therefor; and it is further

ORDERED, ADJUDGED and DECREED that respondent-impleaded, Inland Survey Bureau, Inc., recover of and from Motor Tug ELLEN S. BOUCHARD, Inc. and Bouchard Transportation Co., Inc., and their respective stipulators for costs, its costs as taxed in this Court in the sum of $35.50, and as taxed in the Court of Appeals in the sum of $129.87, making in all the total sum of $165.37, and that said respondent-impleaded have execution therefor; and it is further

ORDERED that unless this decree be satisfied, or an appeal be taken within ten (10) days after service of a copy of this decree, with notice of entry thereof, on proctors for the claimant-respondents, the claimant-respondents and their stipulators cause the engagement of their stipulations to be fulfilled, or show cause within four (4) days, or on the first subsequent day of jurisdiction, why execution should not issue against their goods lands and chattels.

Dated: Albany, N.Y.,
June 17, 1957.

JAMES T. FOLEY
U. S. D. J.

Excerpts From Testimony of Main Trial

—A32—

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FRANK A. LOWERY, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Heckman:

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—A52—

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Q. Now in your experience on the Barge Canal have you seen grain boats, have you seen Barge Canal boats that were loaded with wheat sink? A. Yes.

Q. And are you familiar with the difficulties involved in salvaging a vessel that is loaded with grain in that situation? A. Especially when she is filled up.

Q. When she is fully loaded? A. Yes.

Q. What is to be expected in a situation like that? A. After they're in the water for an hour or so they expand.

—A53—

Q. The grain expands? A. Yes, and busts the sides.

Q. Now when you were told of the sinking of these two boats did you give consideration as to whether or not you would make any effort to raise those boats? A. Yes.

Q. And did you reach a conclusion? A. Certainly.

Q. And what conclusion did you reach? A. I knew they would be beyond repair.

Q. And when did you reach that conclusion? A. I reached it right away, immediately.

Q. You mean right away after what? A. After I had the telephone call.

Q. And what did you determine that you do with the vessels? A. I would abandon them.

Ambrose F. Brennan—for Frank A. Lowery—Direct

Q. Did you make any effort to notify any Government authorities of your abandonment of the vessels? A. Yes.

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—37—

AMBROSE F. BRENNAN, called as a witness in behalf of Frank A. Lowery, being duly sworn, testified:

Direct Examination by Mr. Heckman:

• • • • •

Q. What is your occupation? A. I am employed by the corps of engineers, US Army.

Q. In what capacity? A. Engineer in charge of the Albany Sub-Office, New York District.

Q. And of course that area includes the Hudson River south of the Dunn Memorial Bridge for at least a mile? A. That is right.

Q. Now, were you such September of 1953? A. I was.

Q. And tell the Court how long you have been in charge of the Albany office. A. I have been in charge of the Albany office since 1950, acted—was engineer in charge about a year and a half prior to that time.

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—53—

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Q. Did US Engineers make the arrangements for the removal of both vessels? A. Yes.

Q. That work was undertaken by the United States through the Corps of Engineers; is that right? A. That is right.

Q. You also removed the cargoes? A. We did.

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Ambrose F. Brennan—for Frank A. Lowery—Cross

—55—

* * * * *

Cross Examination by Mr. Atkins:

Q. Mr. Brennan, you do have your file with you? A. Yes, sir.

—56—

Q. Would you be good enough to see if you can locate a telegram from Inland Survey Bureau, Inc. to yourself, dated September 28, 1953? A. I have it.

Q. I am going to ask you to read it into the record. A. This telegram is dated 1953, September 28, A.M., 11:46, it is sent apparently from New York and is addressed to Ambrose F. Brennan, Engineer in Charge, US Army Engineers, Room 322 Federal Building, Albany, New York. "Re: Barges Marion O'Neill and Mae Lowery sunk Albany. Based on our investigation we have concluded that it is not commercially expedient to enter upon any salvage operations with respect to the cargoes on each of the barges and therefore on authority of cargo underwriters we are taking no further steps to enter upon any attempted salvage operation with respect to these cargoes. Thanks for your fine cooperation and patient consideration. Inland Survey Bureau, Inc."

The Court: That is a nice compliment to yourself and your staff.

Mr. Taylor: May I say at this time that I move to strike out with respect to Bouchard as not being binding upon Bouchard this testimony.

—57—

We claim this cargo was salvageable, this is only self-serving declaration by a party that it couldn't be salvaged and was abandoned. This can't be binding on Bouchard. We claim this cargo could have been salvaged.

Ambrose F. Brennan—for Frank A. Lowery—Cross

The Court: Isn't the question whether it was salvaged?

Mr. Taylor: No, what its value was at that time, that is the question. We claim it had considerable value; they claim it was worthless—if we ever get to that point in the question—

The Court: I don't know; did they take it out of the river?

Mr. Taylor: No, they abandoned it to the Army Engineers in accordance with this telegram. What Mr. Brennan did with it I am not quite sure.

The Court: Can't we ask him about it? What happened to the cargo?

A. (Witness) We sold the cargo.

The Court: You sold the cargo?

The Witness: That's right.

By Mr. Atkins:

Q. You sold the cargo? A. That's right.

Q. Was it in a damaged condition? A. It was damaged.

Q. Do you know how much you received for the cargo? A. I do not recall the exact amount but we sold it after taking competitive bids for about ten cents a bushel, placed by us in purchasers' scows.

Q. And in the condition—it was placed in the purchasers' scows in the reconditioned manner or as it was when it came out of the scow? A. It was placed in the scow, in the purchasers' scow, just as it came out of the wreck.

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ALEXANDER H. SCHNAPP, called as a witness in behalf of Frank A. Lowery, being first duly sworn, testified as follows:

Direct Examination by Mr. Heckman:

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—78—

Q. Did you make an examination of the stern of the vessel? A. Yes, I did.

Q. And will you describe the stern of the vessel as you examined it on the days you were diving? A. Well, I went to the stern and the whole barge was all overflowing with wheat that was expanded from the water, and as I went to the stern in the No. 4 hold, let's call it No. 4 hold, by the stern, I believe they have four holes on the barges, I found parts of the cabin and the stern, and as I went further back the whole end of the barge was pushed into No. 4 hold with the bed and the bed springs pinned underneath, and the damage exceeded down to the middle of the barge with the side split open.

Q. How would you describe the stern of that vessel? A. Well, I could not put any lines on there, because there was nothing to put it onto, because it would pull right up.

* * * * *

—80—

Q. Now, in addition to the stern being pushed forward in the manner that you described, I believe you said that certain contents of the cabin were found forward of where the cabin was and in the hold forward of that; is that correct? A. Yes, a part of the top.

Alexander H. Schnapp—for Frank A. Lowery—Cross

Q. What part of the cabin furniture was it that you saw? A. Well, you could not see any furniture. That was all covered by grain. The grain formed a mound and pushed out over the side.

—81—

Q. Didn't you mention a mattress? A. Yes.

Q. Where did you find that mattress? A. I found it pinned underneath the stern, and the spring.

Q. And the spring, too? A. Yes, sir.

Q. Pinned underneath what part of the stern? A. It would have been, let's see, it would be the starboard side.

Q. Was it the upper part of the stern or the lower side? A. The upper part.

Q. The upper part? A. Yes.

Q. And what part of the stern had been pushed forward? A. The whole stern.

Mr. Heckman: That is all.

Cross Examination by Mr. Taylor:

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—83—

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Q. And did you notice that the hatch covers had been forced up and the tarpaulins had been forced up? A. That's right.

Q. In other words, the expansion of the wheat had forced the hatch covers and the tarpaulins to come up?

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—84—

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Q. You say that she was overflowing with wheat at the stern? A. Well, all over, on the bow and on the sides.

There was quite a bit of wheat and, of course, the current carried quite a bit down stream.

Q. Did you notice especially the stern of the barge, that is, all the way down to the bottom? A. Well, I went down as far as the damage area and could not find any place to attach any lines and then I concentrated more on the bow.

Q. Was that because the wood was rotted or because it was broken? A. Because of the damage on the stern.

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—115—

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MELVILLE J. HORN called as a witness in behalf of Cargill, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Atkins:

Q. Where do you live, Mr. Horn? A. East Atlantic Beach, Nassau County, New York.

Q. What is your business? A. Surveying and adjusting marine claims.

Q. With what company? A. Inland Survey Bureau, Incorporated.

Q. Are you an officer of that company? A. Yes, sir; president.

Q. How long have you been with the company, since its organization? A. Yes, sir.

Q. How long has that been? A. I think 1927, 27 years.

Q. Tell me in general the business of the Inland Survey Bureau, perhaps a little more in detail, where you have offices and what you do and so forth? A. We have an office

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in New York and an office in Buffalo, New York, and we examine damages for insurance companies, assess them

for repairs; we also adjust claims under marine insurance policies.

Q. And do you do any work in connection with your surveying vessels prior to their reception of cargoes? A. Yes.

Q. By the way, you have a Mr. Loeser with you? A. Mr. Wilfred N. Loeser, in our Buffalo office.

Q. In what capacity? A. He is the manager of that office.

Q. He is an officer of your company? A. Frankly I don't recall, I think he is a vice-president but I am not sure.

Q. You have been in court during the progress of this case? A. Yes, sir.

Q. Do you know the motor tug Frank Lowery and the barges mentioned as being involved in this collision? A. Yes, sir.

Q. How long have you known them? A. 27 years; Mr. Lowery didn't own all of those boats during that period.

Q. But you knew the barges? A. Yes.

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—316—

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EUGENE MEYER called as a witness in behalf of Bouchard, being first duly sworn, was examined and testified as follows:

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—319—

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Cross Examination by Mr. Heckman:

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—321—

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Q. The stern of the Marion O'Neill was pushed forward; wasn't it? A. It was badly crushed, I would say.

Q. It was badly crushed? A. Well, what I could see of it.

Q. What do you mean by badly crushed? A. Well, the cabin was smashed. It came up in pieces.

Q. How about the stern itself? A. I didn't see too much of the stern. We didn't raise her completely out of the water.

Q. Oh, I see. Did you raise the Mae Lowery completely out of water? A. No, sir. I raised it enough off the bottom to float it into shore.

Q. And was part of her deck always submerged? A. Well, at low tide her deck was pretty well out.

—322—

Q. And how about at high tide? A. It was pretty well submerged.

Q. I suppose the deck was covered with some slime? A. Not too bad.

Q. But there was some slime? A. Well, there is always slime on the water.

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—323—

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Redirect Examination by Mr. Taylor:

Q. Just one other question, Mr. Meyer. Am I right in thinking that it is your job to try to salvage anything on

—324—

these two vessels that had any value? A. Well, it is common practice to salvage anything rather than to throw it away.

Q. In other words, these vessels were abandoned to the government? A. That's right.

William R. Bagger—for Bouchard—Direct

Q. And it was part of your job to salvage anything that was on those vessels? A. Yes, sir.

Q. Including cargo and otherwise? A. Yes, sir.

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—473—

WILLIAM R. BAGGER called as a witness in behalf of Bouchard, being first duly sworn, testified as follows:

Direct Examination by Mr. Taylor:

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—504—

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Q. Do you know the Inland Survey Bureau? A. Well, I know their staff, I have had occasion during the years to survey with them.

Q. Are they a recognized firm in the surveying business in New York? A. Yes, I think so.

Mr. Taylor: I object to this line of questioning, reputation isn't going to help them if they were negligent in this particular case.

—505—

The Court: Overruled; you may ask.

By Mr. Atkins:

Q. And do you know they have had experience in surveying barges of the type involved in this action for many years? A. Well, I know they have acted on behalf of underwriters for many years.

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Excerpts From Testimony Before the Commissioner

—23—

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MELVILLE J. HORN called as a witness in behalf of libellant, Cargill, Inc. being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Atkins:

—24—

Q. Mr. Horn, where do you live? A. Long Beach, Nassau County, New York.

Q. And what is—do you know the Inland Survey Bureau, Inc.? A. Yes, I know the Inland Survey Bureau, Inc.; I am president of that organization.

Q. And where is the Inland Survey Bureau, Inc. offices? A. 111 John St., New York City.

Q. What is the business of Inland Survey Bureau, Inc.? A. Marine surveyors and adjustors.

Q. How long have you been engaged in such business with Inland Survey Bureau, Inc.? A. Since about April, 1927 or '28.

Q. And previous to that time had you had any experience in surveying? A. Yes.

Q. Will you tell us over what period? A. The E. W. Holmes Co. was a predecessor company, and prior to that I did some work for marine insurance companies as an individual.

Q. Now it has heretofore been testified and is in the record upon the examination of one Mr. William Onderdonk that Appleton and Cox, Inc. as attorneys in fact for the interested underwriter or underwriters settled the loss under a customary loan receipt with Cargill, Inc.; now I

—25—

am asking you just yes or no whether you know Appleton and Cox, Inc. A. Yes.

Q. Were you brought into the picture following the collision between the tug BOUCHARD and its tow and the motor vessel FRANK LOWERY and her tow? I am asking if you were brought in? A. Yes.

Q. And by whom? A. Appleton and Cox.

Q. When? A. On the morning that this collision occurred.

Q. That would be September 25? A. September 25.

Q. 1953? A. Yes.

Q. Now— A. (Interrupting) Very early in the morning.

Q. For what purpose? A. For the purpose of ascertaining if it was possible to economically salvage the cargo.

Q. Now what steps did you take, what did you perform in connection with such service? A. I telephoned to Mr. Hochberg of Millhurst Mills, Freehold, New Jersey and to Mr. Ormsby of the Soybean Products Co. in Oswego and asked both of those gentlemen to proceed immediately

to Albany and meet one of our men, a Mr. Hylind and make us an offer for the grain.

Q. Who is Mr. Hylind? A. Mr. Hylind is an employee of the Inland Survey Bureau.

Q. And on what date did you do the telephoning that you have referred to? A. Shortly after 9 a.m. September 25th.

Q. Now thereafter did you keep in touch with the situation here in Albany? A. Yes.

Q. By what means? A. Telephone.

Q. And what did you do and what did you ascertain? A. I requested Ormsby and Hochberg to come to Albany, look over the situation, meet Mr. Hylind and Cargill, Inc. and make an offer for this grain under the water, as is, pointing out to both these gentlemen that the War Department would not permit us or anyone to remove—

Mr. Taylor: (Interrupting) I object to this, it is not responsive.

A. (The witness) That is what I did.

Mr. Taylor: As to the War Department.

The Commissioner: Repeat the question.

(The Reporter read back the last question.)

Mr. Taylor: I move to strike it out starting with

—27—

the part about the War Department.

The Commissioner: I will sustain the objection and ask that that part referring to the War Department be stricken out and ask Mr. Atkins if he would rephrase his question.

Mr. Atkins: Well, only that part is stricken out?

The Commissioner: Yes.

Mr. Atkins: I have no objection to that being stricken out.

By Mr. Atkins:

Q. You have mentioned telephone conversations, did you contact the War Department in New York or did they contact you? A. They contacted us.

Q. And will you state the substance of any conversations held with the War Department in New York.

Mr. Taylor: Well, I object to what the—I assume he is referring to the Engineers right here in Albany.

Mr. Atkins: No, in New York.

Mr. Taylor: I object to what conversation was had with a third party, I think there is better proof.

Mr. Atkins: That is part of it, Mr. Commissioner, our position is and the libellant's position is first that

the testimony in the main case shows that Appleton
—28—
and Cox, Inc. under a loan receipt settled this loss with Cargill, Inc. I don't have to go into that and the issue here is whether or not Cargill, Inc. and/or Appleton and Cox, Inc. took appropriate measures to minimize the loss and my submission is that engaging a well known firm of surveyors to resolve that question for them was perfectly appropriate and that Mr. Horn, the witness, may testify what measures he took, and I could even go so far as to this, I don't think I have to, but whether or not Mr. Horn, the Inland Survey Bureau, were justified in a recommendation of abandonment; that if the interests of Cargill relied upon such information, that they then had a perfect right to accept the recommendation and to abandon it.

The Commissioner: Repeat the last question.

(The reporter read back the last question.)

The Commissioner: I will overrule the objection subject to Mr. Taylor's objection on the record; go ahead.

A. (The witness) The War Department—

By Mr. Atkins:

Q. If you can, name the person. A. Captain Westerfeld informed our office.

Q. Do you know who he is? A. Captain Westerfeld of the U. S. Army Engineers in New York telephoned our office which is a customary procedure in all of these sinkings,
—29—
and said: "What are you going to do with the cargo at

Albany, because the wrecks are a menace to navigation?" And we told Mr. Westerfeld that we were in touch with Mr. Brennan and that Mr. Brennan desired to blow up the wrecks and we had asked Mr. Brennan to give us until Monday morning.

Q. What date was this conversation? A. The day of the 25th—to give us until Monday morning to try to find some method whereby we could salvage the cargo economically, reasonably; we then telephoned these men to come down here and look at the grain. During that day or the following day Mr. Hylind telephoned me and said the men were here—

Mr. Taylor: (Interrupting) I object to what Mr. Hylind said. Is Mr. Hylind an employee of yours?

A. Yes, and he works under my direction and he comes to me with the proposition for me to make the decision.

The Commissioner: What is the ground for your objection?

Mr. Taylor: Hearsay. Mr. Hylind can be produced here without any difficulty, he is one of their employees.

The Commissioner: I sustain that objection on the ground it is hearsay. Is there any reason why you can't produce Mr. Hylind?

—30—

The Witness: Both of these men gave me the office to—

Mr. Atkins: (Interrupting) Mr. Horn has testified he is the President of Inland Survey Bureau, he was engaged by Cargill interests to look into the feasibility of salvaging the cargo, minimizing the

loss. Mr. Hylind is part of his organization. To do that he sent Mr. Hylind to Albany and he received reports from Mr. Hylind which was in the ordinary course of his business and it is a situation where it is not the question of—the question at issue is not the question of fact relating to the circumstances surrounding the collision, it is a question of fact as to the feasibility of determining whether any salvage could be economically undertaken.

The Commissioner: Did these gentlemen to whom Mr. Horn is referring testify on the main trial?

Mr. Taylor: No, they did not.

Mr. Atkins: No, Mr. Horn testified in the main trial.

The Commissioner: And these gentlemen to whom he is referring as having the conversations with did not testify in the main trial.

Mr. Atkins: No, they did not testify in the main trial but if the Commissioner objects to the question

—I mean, excuse me, if the Commissioner overrules the objection I must enter my exception to the ruling.

The Commissioner: The objection was as I understand it as to the conversation Mr. Horn had with Mr. Hylind.

Mr. Atkins: One of his men, and what induced him to act upon it.

The Commissioner: I would sustain the objection as to hearsay and say if Mr. Horn could testify as to what he actually did pursuant to those telephone conversations that would be all right.

Mr. Taylor: I have no objection to that.

By Mr. Atkins:

Q. All right, so you did hear from Mr.—you sent Mr. Hylind to Albany? A. On the—

Q. (Interrupting) Just yes or no. A. Yes.

Q. And you did receive reports from Mr. Hylind? A. Yes, and—

Q. (Interrupting) That is enough right there. Now acting on reports that you received from Mr. Hylind what did you do in chronological order? A. On September 26th, the day following, Mr. Hylind telephoned me that Hochberg was on his way, that he had heard from Ormsby's repre-

sentative here on that afternoon, Saturday afternoon. Hochberg confirmed to me over the telephone that he would pay two thousand dollars for the cargo as is and plus one-half of any profits if he made any profits. Later in that day Mr. Ormsby said he would pay two thousand dollars flat, no profits. I told Mr. Hylind to tell this to Mr. Bouchard's surveyors and attorneys which he says he did. Now I am sorry, this is hearsay, Mr. Hylind came back to New York the following day and I have his notes here.

Q. You talked with Mr. Hyland in New York? A. I talked to him and made these notes right there and then and he says— .

Mr. Taylor: (Interrupting) Is there any reason why we can't get Mr. Hylind?

The Witness: Yes, beg your pardon, go ahead, yes, we can produce Mr. Hylind.

Mr. Atkins: It would encumber—I have no objection to producing Mr. Hylind but it will incur additional expense.

Mr. Taylor: We will take that risk.

The Commissioner: As I understand it you say you made notes pursuant to the conversations you had with Mr. Hylind, the information in those are actually of your own knowledge.

The Witness: Yes.

—33—

The Commissioner: Will you testify as to your own knowledge?

Mr. Taylor: I object in so far as they are based on what somebody else told him.

The Commissioner: Go ahead Mr. Horn.

The Witness: We did not accept either one of these offers because I was told that Mr. Bouchard's surveyors and attorneys—

Mr. Taylor: I object to that.

The Witness: That is the reason why we didn't take the bid. On Monday morning—

The Commissioner: Your objection is on the record as to hearsay. I am overruling the objection and permitting him to testify.

Mr. Taylor: That part where he said he heard somebody say Bouchard wouldn't accept this, it is both irrelevant and hearsay, we don't know where it originated.

The Commissioner: Are you moving to strike that part of the testimony from where he said he heard?

Mr. Taylor: Yes.

The Commissioner: I am striking that part from where he said he heard.

The Witness: On the following Monday morning, Captain Westerfeld—

By Mr. Atkins:

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Q. That would be September 28th? A. Whatever it was, Captain Westerfeld again telephoned our office and said something would have to be done, that the Army Engineers felt they had waited long enough and would we furnish the Army Engineers with the names of the people who had offered to buy this cargo.

Q. May I interject and ask whether by that time you had been informed by Mr. Westerfeld, I will put it on impersonally, of a collision with the tug Kehoe and one of the barges? A. No, I don't recall that he did, all he said is they were a menace and they had to be removed, they had to start that day.

Mr. Atkins: It is part of the record, I take it it can be conceded that the tug Kehoe did—

Mr. Taylor: (Interrupting) That is right in the record, Mr. Atkins.

Mr. Atkins: It is in the opinion.

Mr. Taylor: That I believe was before the wrecks were marked by anybody.

Mr. Atkins: Yes.

By Mr. Atkins:

Q. Go ahead. A. We gave Mr. Brennan in Albany and Mr. Westerfeld names of the two people who had made offers on the cargo and I think about noon that day we

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telegraphed to Mr. Brennan, Army Engineer in Albany, that we did not believe it commercially expedient to pursue the matter any further and the two bids as far as any records show did make some offer to the Army Engineers.

Q. Now, let's assume, Mr. Horn, that you—did you consider the feasibility of engaging salvage equipment to endeavor to salve some cargo? A. We did and we conferred with a Mr. Ezmark who had some equipment down the river, but Mr. Ezmark was interested only in removing the hulls for a sum of money and he finally on that Monday told us that he would not enter into any arrangement to raise the cargo and the hulls, he said it couldn't be done economically, the money wasn't there, the value wasn't there.

Q. Now do you know or had you known the barges MAE LOWERY and MARION O'NEIL? A. Yes.

Q. Over a period of time? A. Yes.

Q. And for how long? A. Twenty odd years.

Q. Had your organization had experience on similar barges loaded with grain sinking in the New York State

Barge Canal? A. Yes, in the Hudson River.

Q. In the Hudson River, now based on your experience and your information derived through Mr. Hylind, have you an opinion as to whether or not it could have been economically feasible to engage salvage equipment to endeavor to salve cargo on the two barges mentioned, not on a no cure, no pay basis but on a straight salvage basis? A. No, we did not.

Mr. Taylor: Excuse me—

The Commissioner: The question was, have you an opinion.

The Witness: Yes, I have an opinion.

By Mr. Atkins:

Q. Now what is your opinion?

Mr. Taylor: Now I object to that, the hypothetical question does not contain any of the facts in connection with these particular barges, there isn't enough facts upon which he can base a reasonable opinion; I don't think he saw the barges, I don't think he was present and on the further ground we also object to the question—

Mr. Atkins: (Interrupting) I am going to ask the Commissioner subject to the objection—

The Commissioner: Mr. Horn is qualified as an expert, you have asked him whether as such he has

an opinion. He has testified he has an opinion. If you want to phrase a hypothetical question encompassing within the facts that would qualify him as an expert to testify as to the happening of this accident of which this libel concerns, you may do so.

Mr. Taylor: I also object on the ground he has not been qualified as an expert on salvage work, I don't know what he knows about salvage, dredges, derricks, operations of tugs, all those things that go into the operation of a salvage of this kind.

The Commissioner: That objection I will overrule and you may ask your question, Mr. Atkins.

By Mr. Atkins:

Q. Mr. Horn, assuming that at a point 800 to 1100 feet beyond the Dunn Bridge, the Dunn Memorial Bridge, South, a collision had occurred between a Bouchard tow which struck the stern of the barge Marion O'Neil and that the barge sank almost immediately; that the time was two twenty a. m. Eastern daylight saving time and that within a range of ten to fifteen minutes despite some efforts of the Captain to pump her the MAE LOWERY also sank; and

assume that about 4 a. m. the tug CLAYTON P. KEHOE—and I interrupt myself and say do you know the tug KEHOE? A. I know the tug. Yes.

Q. Came down the river from a dock in the City of

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Albany and ran upon the wreck of the MAE LOWERY; that the collision occurred on September 25, 1953 on a Friday; now assuming that you were requested by cargo interests to explore the possibilities of economically salvaging any of the cargo in the barges MAE LOWERY and MARION O'NEIL, you may also assume that the War Department had advised you that the barges were a menace to navigation and that they contemplated blowing up the barges in order to remove such obstruction, now based on your familiarity with similar salvage operations that would be called upon under the circumstances of such losses, considering the value of wheat, considering the time elements as to the effect of the waters of the Hudson River, what effect they might have on the respective cargoes and the values of such wheat if removed, the market price of such wheat which let us say on September 28 on a Monday had been in the River since Friday, Saturday, Sunday and part of Monday, having in mind the values charged by salvors, actual salvors for their equipment, have you an opinion as to whether or not it would have been economically sound to engage salvors to perform services on a straight pay basis? A. No.

Mr. Taylor: I object to the question on the ground it doesn't contain all the factors involved and leaves out many of them.

The Commissioner: Would you state the facts that

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you felt are left out.

Mr. Taylor: Some of them I think of at the moment are that the cargo was intact at the time for some time after the collision; that the barges were in shallow water; they were within 150 feet of the shore; that the collision occurred on the early morning of September 25, 1953; that the War Department —that is, there is no evidence as to how long the War Department would have granted anybody willing to remove these barges and their cargo and other factors that I can't think of at the moment.

The Commissioner: I will overrule the objection and permit Mr. Horn's answer to the hypothetical question whether or not he has an opinion.

A. (The Witness) I have an opinion.

By Mr. Atkins:

Q. And what is your opinion? A. That it would not be advisable to spend the money to attempt to salvage the cargo. My opinion is that the cargo would not have been worth the cost of salvaging it because we would have to remove the hulls and that alone we estimate would cost $9,000.00.

Q. Why would you have to remove the hulls? A. That is what the Army Engineers makes us do and I personally know that, I have removed cargoes and removed the hulls

to get rid of them.

Q. Could the cargo—

Mr. Taylor: (Interrupting) May I register an objection? I move to strike it out because he says he knows that is what the Army Engineers make him

do, I think the best judges of that are the Army Engineers.

The Commissioner: Unless there is a foundation laid for that question I will sustain the objection.

By Mr. Atkins:

Q. My foundation will be this. Mr. Horn, I will ask you an intermediate question, would there be salvage equipment in Albany available on a straight pay basis to work on salvaging the cargo apart from the hulls? A. The only equipment available in the Port of Albany at that time belonged to the Army Engineers and Mr. Brennan said he would not allow us to use it.

Q. Is there any equipment in the vicinity of Albany? A. There was equipment down the River belonging to Mr. Connie Ezmark.

Q. When you say down the River can you be a little more specific? A. I will have to look through my notes but in any event when Mr. Ezmark considered the thing he said that he was not interested, that it would cost too much.

Q. Could he have been engaged? A. He could have been

engaged, yes.

Q. And have you any idea— A. (Interrupting) But the cost would have been too much.

Q. Have you in similar situations—I mean sunken barges with grain—had dealings with the Army Engineers? A. Yes.

Q. Can you state whether or not it is a rule or condition of the Army Engineers that where barges constitute a menace to navigation salvage operations can be undertaken solely to raise cargo from a sunken barge or barges leaving the barges without raising the barges?

Mr. Taylor: I object to this.

Mr. Atkins: If he can.

Mr. Taylor: I don't think Mr. Horn is qualified to tell us the sum and substance of the rules and regulations of the Army Engineers. If there are written rules we can get them and if they are rules prescribed by somebody informally I think the Engineers had better testify on that subject.

The Commissioner: I feel that if Mr. Horn can testify by citing the instances of his personal experiences with the Army Engineers and base his conclusions on those experiences and not as he has done so far on a personal conclusion I will permit it; but as of now I will sustain the objection of Mr. Taylor.

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By Mr. Atkins:

Q. Can you cite it personally? A. Yes.

Q. All right, state such experiences. A. In 1942 the barge operated by Hedger sank off the bulkhead line of the aluminum plant in Elwater, New Jersey and in order to remove the cargo we had to raise the hull with it and that was direct orders from the Army Engineers. We had a coal barge at the National Sugar Plant on the East River and that barge we brought up in pieces and had it destroyed over at Staten Island but in every one of these instances we have never been allowed to touch the cargo unless we agreed to dispose of the wreck.

Q. Now may I ask you when Mr. Westerfeld in your conversation with him, was anything mentioned with reference to the raising of the barges?

Mr. Taylor: I object to this.

Q. (Mr. Atkins) or of the cargo, apart from the barges, I will add that.

Mr. Taylor: It is pure hearsay.

The Commissioner: He is asking him whether or not there was anything asked, not what was said; I will overrule it.

A. (The Witness) Yes, Captain Westerfeld—

The Commissioner: Just answer the question.

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Read the question.

(The Reporter repeated the last question as above recorded.)

A. (The Witness) Yes.

By Mr. Atkins:

Q. Now will you say what Mr. Westerfeld said to you in such conversation.

Mr. Taylor: I object to what Mr. Westerfeld said to him.

Mr. Atkins: Mr. Commissioner, I am following out the Commissioner's suggestion that if he did have—

The Commissioner: My suggestion was as to his personal experiences with the U. S. Army Engineers. Who is Mr. Westerfeld?

Mr. Atkins: Captain Westerfeld of the Army Engineers in New York.

Mr. Taylor: If we are going to have testimony on

that, let's have the man himself, this is an important enough point.

Mr. Atkins: If the Commissioner wants to call him I have no objection.

Mr. Taylor: This witness' recollection of what a third person said is not satisfactory, they should have the person who said it.

Mr. Atkins: It may not be satisfactory to you.

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The Commissioner: I will overrule his objection and cite Mr. Taylor's objection on the record and permit Mr. Horn to answer, not in so far as what he said, what you did and with relation to what he said.

Mr. Atkins: Mr. Commissioner, we are directing our attention to whether cargo might be salvaged leaving the wrecks untouched and the testimony as I understand it is that it was against the rules or regulations of the War Department to permit such an operation.

The Commissioner: I said I would permit Mr. Horn to answer; go ahead Mr. Horn.

A. (The Witness) Westerfeld said—

Mr. Taylor: Did I understand you to say he could testify as to what he did?

A. (The Witness) What I did, I told Captain Westerfeld that we were not going to salvage the cargoes and the hulls and I confirmed the part about the cargo in the telegram to Mr. Brennan.

Q. Which is in evidence. A. At Westerfeld's request.

Q. Did you render a debit for your services? A. Yes.

Q. And could you tell us the amount of your debit? A. Well, $527.67 to Appleton and Cox, $527.67.

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Q. Mr. Horn, in your testimony this morning you mentioned getting in touch with Millhurst Mills, you recall

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that? A. Yes.

Q. And that Millhurst Mills had made an offer to you to purchase the grain in the barges as is, where is. A. Yes.

Q. You did not accept the offer? A. We did not accept it because—

Q. (Interrupting) You did not accept it. A. We couldn't accept it.

Q. All right, did you thereafter hear from Millhurst Mills? A. Yes.

Q. Now I hand you a telegram dated September 28th, 1953 and ask you to read the telegram and ask you whether you received that telegram? A. At about ten o'clock in the morning of Monday, September 28 we received a telegram from Millhurst Mills.

Q. Will you read the telegram.

Mr. Taylor: May I see it before you read it?

The Commissioner: Would you care to have it marked? Mark it for identification if you will.

(Thereupon the telegram referred to was marked libellant's Exhibit No. 1 for identification.)

Mr. Taylor: I object to it.

Mr. Ryan: It is only marked for identification.
Mr. Taylor: I object to his reading it.

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By Mr. Atkins:

Q. Now I am asking you to read the telegram marked for identification Exhibit No. 1 for libellant into the record.

Mr. Taylor: I object to the reading, it is hearsay.

By Mr. Atkins:

Q. You received the telegram? A. May I see it please?

The Commissioner: May I see it also?

(The telegram referred to was handed to the Commissioner.)

By Mr. Atkins:

Q. Read it.

Mr. Taylor: I object to it on the ground it is hearsay, I have no objection to his testifying what he did after he received the telegram.

The Commissioner: Do you know, Mr. Horn, the contents of the telegram without referring to it?

The Witness: Generally, yes.

The Commissioner: Then Mr. Taylor's objection as to the admissibility of the telegram itself I will sustain.

By Mr. Atkins:

Q. Will you tell us in general the contents of the telegram.

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Mr. Taylor: I object to the content; I have no objection to his saying what he did after receiving it.

A. (The Witness) What I did was based on what he did, what I did was based on this telegram, one of them.

The Commissioner: Do you know now, Mr. Horn, generally the substance of the telegram?

A. (The Witness) Yes, I knew that morning.

The Commissioner: I will overrule the last objection.

A. (The Witness) He said in substance he was withdrawing the bid of two thousand dollars plus splitting the profits, that was on Monday morning.

By Mr. Atkins:

Q. Following the receipt of the telegram what did you do? A. We gave up and telegraphed Mr. Brennan that we were abandoning it.

Mr. Atkins: That's all.

Cross Examination by Mr. Taylor:

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Q. All right, and during this time between the accident and the time you advised the Army Engineers you were abandoning the cargo did you come to Albany at all? A. No sir.

Q. You were in New York all this time? A. Yes.

Q. And your decisions were based on the basis of reports from whom? A. Mr. Hylind, Mr. Hochberg, Mr. Ormsby, Mr. Hendrickson.

Q. Now Mr. Hochberg, he was a man— A. (Interrupting) Was a Millhurst—he is the Millhurst mill man that sent that telegram.

Q. He is the man interested in buying the cargo. A. He was up until that morning.

Q. Who got in touch with Mr. Ormsby? A. I did, I called up his office in Oswego.

Q. And asked him for a bid? A. He acted very quickly, he called a Mr. Clate here in New York.

Q. As far as you know he came to Albany? A. Subsequently, he subsequently looked over the situation.

Q. He subsequently looked over the situation as far as you know? A. Yes.

Q. Then made you an offer? A. Yes, and he is an experienced salvage buyer for many years.

Q. What did you do in the way of hiring equipment to salvage the cargo? A. We discussed the matter with Mr. Connie Ezmark and we come up with a figure around twelve or thirteen thousand dollars which absolutely I know from experience was more than that cargo could be sold for.

Mr. Taylor: I move to strike out the part that is not responsive.

Mr. Atkins: You asked the question.

The Commissioner: Repeat the last question.

(The Reporter read back the last question.)

Mr. Taylor: I particularly object to the part that he says "I knew it was more than it could be sold for."

The Witness: I had to arrive at that question.

Mr. Taylor: I move to strike out the part that is stated as from his experience.

The Commissioner: That part that recites from his own experience may go out. Now will you read the question again.

(The Reporter read back the question referred to.)

Mr. Atkins: Mr. Commissioner, I must take exception to your ruling. Here you have an experienced man in the salvage of grain and he is here primarily

because respondent Bouchard contended that something might have been done to salve the cargo.

The Commissioner: I concede that point, I am merely trying to confine his answers to the questions asked.

Mr. Atkins: That is all right.

By Mr. Taylor:

Q. What other owners of equipment did you consult?

Mr. Atkins: If any.

A. We conferred with Mr. Ezmark.

By Mr. Taylor:

Q. I asked you who else did you consult with? A. No one else but Mr. Ezmark except the Army Engineers, Mr. Brennan.

Q. What type of equipment did Mr. Ezmark have? A. He had a derrick and he has a diver, he has pumps.

Melville J. Horn—for Cargill—Cross

Q. Did he give you a price? A. No sir.

Q. As to each of these items of equipment? A. No sir.

Q. He just gave you this overall price? A. He did not give us any price, he examined the situation and he said he was only interested in picking up the hulls.

Q. Was he interested—strike that out. Did he give you any idea of what it would cost to take the cargo out of

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hulls? A. He did not.

Q. Did you ask him? A. No.

Q. Did you ask anybody else how much it would cost to take the cargo out of the hulls? A. No, because from 25 years experience we arrived at our own figure.

Mr. Taylor: I move to strike out all but the "no".
The Commissioner: So stricken.

By Mr. Taylor:

Q. What did you think, what type of equipment did you think was necessary to take the cargo out of those two holds? A. Well you need at least two lighter barges, a derrick barge, a diver, pumps, possibly some clam shells.

Q. What was the derrick barge for? A. To get alongside to hold the gear if you wanted to pump the grain or dig it.

Q. What was the pump for? A. To pump the grain.

Q. And what type of pump would it require? A. I don't see—a pump.

Q. What type of pump? A.–A pump that pumps water.

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Q. You would use any ordinary water pump to pump? A. No, you would use a large one.

Q. About what size? A. About four inches.

Melville J. Horn—for Cargill—Cross

Q. How long would it take a four inch pump? A. I don't know because we didn't do the job.

Q. From your experience how long would you say? A. I would have to go to my records.

Q. You can't tell us off hand? A. No, because it varies.

Q. You can't tell us how long it would take a four inch pump to pump the cargo out of either of these barges? A. No, we didn't know how much cargo was in it.

Mr. Atkins: I am objecting to this question on the basis that the time is not specified, that it does not take into consideration cargo that might have been washed away from the barge and there is not a specific quantity of grain mentioned.

Mr. Taylor: Mr. Atkins, I am sure if this witness doesn't understand the question he will say so.

Mr. Atkins: I am still objecting.

By Mr. Taylor:

Q. You don't know—

The Commissioner: Wait a minute, read the question.

(The Reporter read back the last question.)

The Commissioner: You are objecting on the ground—

Mr. Atkins: We don't know how much cargo there was on the barges on that particular day which is not mentioned in the testimony in the main case, much of the cargo washed away.

The Commissioner: I think under those circum-

stances the witness can answer yes or no, he does or doesn't know.

The Witness: I wouldn't know.

By Mr. Taylor:

Q. Assuming she had her full cargo how long would it take? A. We had one barge it took four days and we didn't get all the cargo.

Q. To pump out how much grain? A. About 15,000 bushels.

Q. How long would it take a six inch to pump out 19,000 bushels? A. I don't know, I can go back to New York and I can dig up records and tell you how long it takes.

Q. What was the function of the derrick barge in this operation? A. To carry the pumps and also to operate

a bucket if that would help.

Q. Now— A. (Interrupting) The bucket to dig the ground.

Q. If it would take one four inch pump to pump out the grain, all of the grain in one of these barges, I take it it would take two four inch pumps half that time. A. They vary, you would be surprised how they vary.

Q. What varies? A. You have a situation where wood in between—the diver has to go down and place the suction, the suction blocks up, tidal waters sometimes interfere, there isn't two of them alike, that I can think of.

Q. And of course you don't know what the situation was with these two barges? A. All I need is what people tell me, I knew then the stern was going.

Q. Presumably two pumps could do the work twice as fast as one pump? A. Not necessarily because the diver couldn't handle the two pumps, you have to have a man to keep the suction in the grain.

Q. You could have two divers? A. Yes.

Q. Two divers and two pumps could do it twice as fast? A. I don't know, I wouldn't hazard a guess; we have made

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money where everybody thought we would lose it.

Q. You can't tell us? A. No one can tell you.

Q. All right and you can't tell us how fast those two barges could have been pumped out? A. No, and I say no one could. I think the Army Engineers could tell you because they went out and raised them anyhow.

Q. What is your recollection of the price of processed wheat—strike that out. Do you know what wheat that had been wet and then dried was selling for in September 1953? A. You might possibly get as much as a feed price for it but I would have no recollection of that.

Q. What was the feed price in September 1953? A. I don't recall.

Q. How can you tell us whether it was worthwhile salvaging these barges? A. After you do it for twenty-five years—

Q. (Interrupting) Please just answer my question, if you don't know what the feed price was in September 1953— A. (Interrupting) Because we estimated that it would cost us not less than $12,000.00.

Q. What I asked you—

Mr. Atkins: (Interrupting) Wait a minute.

The Witness: (Interrupting) We estimated it wouldn't cost us less than $12,000.00 to get the grain

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out of these barges and that would be wet grain and very wet, it would have lost much of its gluten, which is the real value in wheat. We figured that if we did get it out of the boats wet, we might get ten cents a

bushel in its wet condition, but $12,000.00 would be 120,000 bushel.

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Q. How deep did you figure these barges were under the water? A. That doesn't make any difference, the grain is just as wet one foot under water as 100 foot.

Q. Is it just as easy to pump cargo out? A. No, beyond 30 feet it becomes difficult.

Q. And it is just as easy at 30 feet as it is when it is close to the surface? A. Beyond that would be bad.

Q. How deep did you figure this cargo was? A. These barges I figure were about 18 to 20 feet at the most, the bottom of the cargo.

Q. And the top of the cargo, how far did you figure that was? A. I imagine that would be about 5 feet, but the top washes out so there was no cargo on the top.

Q. Now this chap Ormsby, the man that offered to buy the wheat from you, is he in the salvage business of salvaging wheat? A. Yes he does, he buys it under water and hires equipment and digs it out.

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Q. And have you any idea of what profit they expect to make? A. No, I haven't.

Q. We can presume they expect to make a pretty large profit in this situation? A. I know they lose money sometimes, they always tell us when they lose but they don't tell us when they win.

Q. The only equipment that you know that was in this area was owned by this man Ezmark? A. And Mr. Brennan and the Army Engineers.

Melville J. Horn—for Cargill—Cross

Q. Now I would just like to get a little more detail as to exactly what equipment you thought would be required to do the job of taking the cargo out. A. Of both these barges, lighter barge.

Q. How many barges? A. Two lighter barges.

Q. And what else? A. That is barges to hold the wet grain.

Q. Deck scows or something of that type? A. No, deep barges.

Q. Deep barges? A. That would hold the wet grain.

Q. What else did you require? A. Small derrick barge or scow with a derrick capable of holding the pumps, capable of operating a clam bucket.

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Q. How much would it cost for two lighter barges per day? A. That all depends where you get them.

Q. What is the range of price? A. Well let me see if I have some notes here, considering the fact they get very dirty they probably cost—if you could get them—that was another difficulty, $50.00 a day is what we figured on or what was quoted.

Q. What would a small derrick cost? A. I think Mr. Ezmark or somebody gave us a price, that would be about $100.00 a day plus towing.

Q. Have you any idea of the towing charge? A. No, we made a rough estimate of $12,900.00.

Q. Of the entire operation? A. Not including cleaning it out.

Q. Mr. Horn, I am not asking you that.

Mr. Atkins: Wait a minute. Mr. Commissioner, I am asking what the towing would be.

The Commissioner: Are you objecting, Mr. Atkins?

Melville J. Horn—for Cargill—Cross

Mr. Atkins: I am objecting to not permitting him to answer the question.

By Mr. Taylor:

Q. The question I have is did you know how much the towing charges would be in connection with the small derrick? A. No, just a rough estimate.

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Q. How many pumps would be required to do this work? A. I would say two would be better than one.

Q. What size? A. Four to six.

Q. Inches? A. Yes.

Q. And those are the same type of pump used for pumping water? A. Yes.

Q. Do you know what the rental hire per day for a six inch pump is? A. No, I have a record though.

Q. Is that all the equipment you would require to take the cargo out of both of those barges?

Mr. Atkins: Now I am going to enter this objection just for the sake of the record that all of the questions relate solely to taking the cargo out of the barges.

Mr. Taylor: That is all I am interested in at the moment.

Mr. Atkins: And that is all he is interested in, whereas the testimony has been that such an operation could not be performed, it would be contrary to the regulations or they could not secure the permission of the Army Engineers to conduct such an opera-

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tion unless it carried with it the removal of the barges.

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The Commissioner: Mr. Horn, you have testified that so far it would require two lighter barges, a small derrick barge and two pumps from four to six inches. The question is is that all you require.

The Witness: No.

By Mr. Taylor:

Q. What other equipment would you require? A. We would need—in the first place we would have to move the equipment to the scene of the wreck.

Q. The two lighter barges, the derrick and pumps? A. Yes.

Q. All right. A. Then we would have to have the tugs stand by to shift that lighter barge as they required; then we would have to have anchors to anchor the damaged barges which would certainly come up as soon as we started taking that cargo out; then we would have to have a tug tow the remains up here beyond Menands Bridge, was the place we figured we could drop them.

Q. And do you know what the cost per day of a tug to

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do this work is? A. No, I didn't go into it, I estimated $12,900.00.

Mr. Taylor: I move to strike out for the fourth time—

Mr. Atkins: (Interrupting) I think it is a fair answer.

By Mr. Taylor:

Q. You don't know how much a tug would cost a day? A. Yes, around four hundred fifty to one thousand dollars a day.

Melville J. Horn—for Cargill—Cross

Q. Can you give us an estimate, what is your estimate—strike that out. What is your estimate of how long it would take two six inch pumps— A. (Interrupting) I never estimated it.

The Commissioner: Wait a minute, let him finish the question.

By Mr. Taylor:

Q. What is your estimate of how long it would take two six inch pumps to unload the cargo from those two barges if the entire cargo was intact? A. Based on previous experience it would run from four days to six days depending on weather and tide.

Q. For both barges? A. For one barge.

Q. Four to six days for both barges? A. It took six days for one barge—

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The Commissioner: Four to six days for one barge?

The Witness: Yes.

By Mr. Taylor:

Q. Now then after the barges were lightened they would float, is that correct? A. Yes, they do, they will float away.

Q. Then you had thought after they had floated you would take them where? A. Up to Menands, up above the Menands bridge.

Q. And dispose of them there? A. Yes, with the approval of the Army Engineers.

Q. And in that place they would not be a menace to navigation? A. That is what the theory was then.

Q. How far is the Menands Bridge from here? A. Up here about four or five miles.

Q. When you were talking of a price—strike it out. Can you tell us what you could get for wet wheat? A. If we raised it and got it out of the water we certainly could figure ten cents a bushel.

Q. That would be to whom? A. To who what?

Q. To what type of person, would a farmer buy that? A. No, it would have to be to a man who had a drier.

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Q. I see, what kind of driers do Cargill have? A. They have low moisture driers.

Q. At their home plant? A. Yes, that is all the business requires.

Q. And how many of those driers do they have? A. I don't know but they cannot handle that kind of wheat, we tried it.

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Q. Is it possible that some of this wheat could come out dry with a pump? A. No.

Q. Well, wouldn't the pump go down into the hold? A. That's right.

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Q. Doesn't the wheat in the center remain dry? A. No sir.

Q. What is your experience? A. Because when you pump off the wet wheat the water gets to every part of your grain, it swells, it floats, it splits the bottom.

Q. You put the hose down into the dry wheat, isn't that

so? A. There is no dry wheat, the first part that you get with your pump is wheat right off the top, you have got to

—75—

pump a certain amount of water to act as a conveyor for the wheat.

Q. Supposing the wheat is above the water, suppose it is awash. A. I don't know this wasn't awash.

Q. You don't know, do you? A. I certainly do, I certainly trust the men that gave me the facts that the wheat was under water.

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Q. Anyway as far as you know everything was submerged at all times? A. Yes sir.

Q. And that is the basis of your estimate, is that so? A. Yes.

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Q. Can you help us on this, Mr. Horn? If the wheat

—80—

was removed in six hours, what percentage of moisture would the wheat have? Can you give us some idea on that? A. About 30%, at least 30%.

Q. And if it was removed in 12 hours? A. It wouldn't make much difference, it reaches a saturation point.

Q. And that saturation point— A. (Interrupting) Is around 30 or 35%.

Q. And it would be practically the same after a few days too? A. No, then it begins to break open and gets mushy, you haven't got any kernels left.

Q. That is the part that is in contact with the water? A. Yes.

Q. And the entire part— A. (Interrupting) It goes right

through and expands and the gluten comes out in the form of—they call it milk.

Q. What did you estimate could be removed from these two barges? A. I didn't think we would get more than half of it.

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Redirect Examination by Mr. Atkins:

Q. When you stated in answer to one of Mr. Taylor's questions that not more than half of the grain could be removed in salvage operations, you had reference to both

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barges? A. Both barges, considering it wouldn't start until the next week.

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Q. So that when you considered that not more than half of the grain could be removed, did you consider that not more than 20,000 bushels could be saved? A. We couldn't get $12,000.00 worth of grain out of it, what we got wouldn't bring us back our $12,000.00.

Mr. Atkins: That's all.

Recross Examination by Mr. Taylor:

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Q. Mr. Horn were there any other driers in the area that could have dried this wheat, that you know of? A. No, there were driers but they weren't big enough, the

—88—

grain would be so rotted.

Q. Where? A. There is a fellow in Troy has a small drier, then there was a fellow up here—

Mr. Atkins: (Interrupting) If you remember the name, give it.

A. No, I don't because they can't handle—yes, his name is Vic.

By Mr. Taylor:

Q. If you just tell us where it was? A. There is a little malt house up here in Albany.

Q. What is his capacity? A. It is very small, it is not enough.

Q. Have you any idea of the capacity? A. No, it wasn't fast enough, we need a drier something like the New York State Barge Canal in New York to dry it fast.

Q. How fast could they dry it, the New York State Barge Canal? A. That will dry, I think we ran as high as 6,000 bushels in a day and night.

Q. And those are the only ones you know of? A. Yes, that is about the highest you can get by the way.

Q. That is 6,000 bushels per day? A. Yes.

Mr. Atkins: Day and night.

A. Yes, they charge overtime and everything. Now Mr. Ormsby—

By Mr. Taylor:

Q. Just one other question, you weren't figuring on selling this stuff as dried wheat, your only— A. (Interrupting) We didn't know if we could see a market, we would

have salvaged, we couldn't see a market so we didn't go any further.

Q. Were you figuring on selling only wet wheat? A. Sometimes we would sell it wet if we couldn't dry it.

Q. In this particular instance you figured on wet wheat? A. Yes.

Q. That is the only estimate you were going on? A. Yes, on a wet wheat basis.

Q. You weren't figuring on drying this wheat and selling it as cattle feed? A. No, let the other fellow gamble.

Mr. Taylor: That's all.

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Mr. Taylor: All right. Then we have a stipulation as to the price of this wheat, and I am willing to stipulate for the purposes of this proceeding that the wheat on the Mae Lowery and Marion O'Neill, for the purposes of this proceeding, was worth $2.00 a bushel at the time it was sunk, that is, before it was sunk, just prior to the time it was sunk.

Mr. Atkins: Would you go further, Mr. Taylor, I don't know that it is very material, but that the

—96—

price of all the wheat was $2.00 on all the barges?

Mr. Taylor: Yes.

Commissioner Mahoney: Excuse me, Mr. Atkins, is this stipulation between you gentlemen as to the price of the wheat inclusive or exclusive of freight, insurance and elevation?

Mr. Taylor: That is the entire value.

Commissioner Mahoney: That is inclusive of all

elements relating to the damages per bushel; $2.00?

Mr. Taylor: Right.

Mr. Atkins: It is exclusive of interest and costs, of course, and Libellant rests.

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MELVILLE HORN, recalled to the stand, having been previously sworn, testified further as follows:

Examination by Mr. Atkins:

Q. Mr. Horn, I show you what purports to be a debit memorandum from your office, dated November 6, 1953, addressed to Appleton and Cox, Inc., and ask you whether

—106—

that debit was paid? A. Yes, it was paid.

Q. And will you examine it and tell us whether that is for services rendered prior to the decision to abandon the cargo? A. Yes, up until that point when they agreed to abandon, that was the end of it.

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THEODORE DE MARS, called as a witness on behalf of the respondent, being first duly sworn, was examined and testified as follows:

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Cross Examination by Mr. Atkins:

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Q. Would you do a little computation for me, you were asked on direct examination to assume that one barge had 18,500 bushels in her. A. Yes.

Q. And the other had 19,000 bushels in her? A. Yes.

Q. That made a total of 37,500 bushels? A. Yes.

Q. Now, I would like to have you do it yourself at ten cents a bushel, what money salvage would you have? A. At ten cents a bushel?

Q. Yes. A. That is very easy, we have 37,500—

Q. Yes. A. $375.

Mr. Taylor: I object to that.

By Mr. Atkins:

Q. No, $3,750., isn't it?

Mr. Taylor: I want to get this objection on the

—135—

record, there is nothing in the evidence to support this.

The Witness: He asked me that.

Mr. Taylor: I understand that.

The Witness: It is ten per cent of 37,500, it is $3750.

By Mr. Atkins:

Q. Which is less than the cost of your salvage of $7,837. A. That is the answer to your question, but that had nothing to do with my computation, I wouldn't care if he didn't get five cents for that, I was getting a salvage job and

he is going to pay me to do it, what did I care what salvage he gets?

Q. All right, I will ask you this question, assume that when you were hired by Cargill you were also asked whether it would be feasible from a monetary point of view to salvage the cargo—

> Mr. Taylor: I object to it, Mr. Commissioner, because it just takes up the record. The witness said he knows absolutely nothing about the value of grain. What is the use of stocking up the record?
>
> Commissioner Mahoney: Let me ask the witness this question, do you at any time in being hired for any salvage operation whatsoever, regardless of the content of the boats, take into consideration the value
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> —136—
>
> of cargo?
>
> The Witness: I do not.

By Mr. Atkins:

Q. Now, I am assuming that you were hired on this job and asked whether it would be feasible from a monetary point of view to salvage this cargo? A. I was never asked.

Q. If you were asked. A. If Cargill called me and asked me and it was a cargo matter, I would say "You don't want me for your survey, you better get Mel Horn or Ronney Wells or someone else".

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Recross Examination by Mr. Atkins:

Q. Captain, I did want to ask you another question. When you finally got the grain to New York in barges,

how much would it cost to get the grain out of the barges in New York? A. I wouldn't know that.

Q. That's all. A. That would be the grain elevator's job.

Q. That is not in your computation? A. No, they have the legs and the suctions to take it out.

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BERT EISENBERG, called as a witness on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

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Cross Examination by Mr. Atkins:

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Q. All right, now, we have some wheat that is saturated in a barge. A. Yes, sir.

Q. And the wheat is salvaged and put into another barge in Albany. A. Yes, sir.

Q. You still have wet wheat? A. Naturally.

Q. But we have another element, we have more air? A. Yes, sir, we do.

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Q. And there is an effect the air has on it? A. Air will affect it, yes, sir.

Q. And— A. (Interrupting) It wouldn't go down to the bottom, it will affect the top layer.

Q. There will be mildew on it? A. It may happen, it is all hypothetical, depending on the weather.

Jack Hanisch—for Bouchard—Cross

Q. And depending on time? A. The time element would be considered, but from my knowledge and experience the top layer may absorb a little bit.

Q. And it might cake? A. Well, it is possible, it is possible that it will but the wet wheat that I bought I used.

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JACK HANISCH, called as a witness on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Cross Examination by Mr. Atkins:

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Q. What is the largest quantity of wheat of that kind that you handled in one operation? A. I think it was 15 or 20 tons.

Q. 20 tons, and this would be, as we figured out, about a thousand tons? A. Yes.

Q. When did you learn about the sinking of these two

—160—

barges? A. Only yesterday, actually I wasn't called in as a buyer, I was called in for my actual opinion of the grain as a whole.

Q. Did you ever buy any graded feed wheat? A. In small amounts, yes.

Q. In 1953? A. I wouldn't say so, no.

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Marcus Marshall—for Bouchard—Direct

MARCUS MARSHALL, recalled, having been previously sworn, testified further as follows:

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Commissioner Mahoney: Well, let me address a hypothetical question to you then. Assuming that there was deposited at Cargill, Inc. in Albany 37,500 bushels of barley saturated to the maximum—

Mr. Atkins: Wheat.

Commissioner Mahoney: Wheat, saturated to the

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maximum point of 30 per cent; is the drying mechanism you have here sufficient to dry that amount of wheat?

The Witness: No, sir.

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Commissioner Mahoney: Let me ask you this question. You are in charge of the drying machine and all other machines incidental to the use of the drying machine at Cargill at Albany?

The Witness: Yes, sir.

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By Mr. Taylor:

Q. Assume there were 37,500 bushels of wheat loaded at Buffalo, New York consigned to Cargill at Albany, and prior to reaching the point of destination that wheat was sunk and saturated to the point of 30 per cent and there-

after raised and delivered to Cargill at Albany; would you be able to receive and dry that wheat? A. No, sir.

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EUGENE C. MEYER, called as a witness in behalf of the Claimant-Respondents, Bouchard, being first duly sworn, was examined and testified as follows:

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Cross Examination by Mr. Atkins:

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Q. What did you have to do with delivering the wet wheat from the barges to a place where it was delivered from the barges? A. Well, now, when we started in, we were putting it in our own dump scows,-the wheat.

Q. That is the Government dump scows? A. That is the Government dump scows, and it was taken down by our boats to the dump grounds and dumped. And then as far as I know—

Q. Now, does the 29,555 include the wheat that was dumped? A. Yes.

Q. Can you tell us the quantity of wheat which was dumped from your own dump scows? A. I think the quantity of wheat that was loaded in this grain boat that went to Universal grain boat, that was 18,400 bushels.

Q. The balance—strike that out. Assuming there was a total of 37,500 bushels shipped and on board at the time

these two barges were sunk, the difference between—I
—190—
think that's right, 37,500 Your Honor.

The Commissioner: That is correct, Mr. Atkins.

Q. The difference between 37,500 bushels and 18,400 bushels amounts to 19,100 bushels which then would represent, I am asking you, would represent the number of bushels that were washed away from the barges plus the number of bushels dumped.

Mr. Taylor: Does the witness understand the question? I am frank to say I don't.

Mr. Atkins: Well, I am asking the witness now.

The Witness: I would say that figure was possible. The grain had been loaded in our own scows and dumped, and the grain spread around at the time of the accident and the grain left in the scows, would represent that.

By Mr. Atkins:

Q. Including the grain that was washed away? A. That's right.

Q. Now, who owned the derrick No. 1? A. That is the Corps of Engineers.

Q. Tell us what equipment was, what Government owned equipment was used in the operation? A. Well, we had two dump scows.

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Mr. Taylor: I would like to register my objection to what the Government used as no indication of what a private salvage individual would use, because their motives were entirely different. This one was

interested in clearing the channel and the other would be interested only in salvaging wheat.

The Commissioner: Objection overruled. The witness may answer.

By Mr. Atkins:

Q. Two dump scows? A. Two dump scows, and, of course, the derrick boat, and I believe we had two of our tugs there most of the time.

Q. Two? A. Government owned small tugs, yes.

Q. Will you describe the derrick—strike that out. There was no other derrick used other than derrick No. 1 is that correct? A. That's right.

Q. Will you describe the derrick? A. Well, that is a 20 ton machine, 100 feet long by well, 35.

Q. Was it a tug, scow, or anything like that, with a hold

underneath the deck? A. Yes, it has a hold underneath, but not to put any material like that.

Q. So no grain was put directly on the derrick? A. No.

Q. Now, was any outside equipment used other than Government equipment? A. Well, the only outside equipment that I know of was the scow, was the grain scow that we loaded that 18 or 19,000, or whatever we sold, and I believe that was furnished by the company that bought the wheat. But outside of that—

Q. I don't know the answer to this question, so I am asking you. Did the Government itself solely perform the operations of clearing the channel of these two wrecks? A. Yes.

Q. There was no contractual arrangement for anybody other than the Government to clear the channel? A. You are speaking of the channel?

Q. Yes. Was there? A. No. We removed the boats from the channel with our equipment.

Q. Do you know a Mr. Esmark. I am not sure of his name. A. Well, you got the right name, Esmark.

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Q. Did he have anything to do with the operations? A. Not from the channel. He removed them from the shore where we left them, I believe. Mr. Esmark.

Q. Do you know what the Government contract price with Mr. Esmark was for that work? A. I could not say.

Q. Why was it necessary to remove the wrecks from the shore? A. Well, you just don't leave scows lying all around the shore, wrecked scows.

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By Mr. Atkins:

Q. Following the sinking of both barges tell me whether at low tide the barges were awash and could you see the decks at low tide? A. The O'Neill—I think that was the one upstream?

Q. Yes. A. That was pretty much under water. I believe at low tide you could possibly see some of it, but I don't recall as it was out of the water at all. I think some of the wreckage may have been. But the one that was down-

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stream, her decks were just out of water at low stream.

Q. Now, I am going to ask about tarpaulins. Whether you—take the one upstream first, that is the MARION O'NEILL, did you notice, did you take her tarpaulins off? A. Well, on the upstream one some of the tarpaulins were gone, some were in pieces, and I could say some of them

were missing. The tarpaulins were not intact. In other words, they were ripped.

Q. And how about the lower one, the MAE LOWERY? A. Well, on the MAE LOWERY, you understand of course that the scows were out there two weeks before we attempted to move them—some of them had divers on them —I don't know who they were and as to what was on there, I don't know. Probably there was a few tarpaulins left. I know we had pieces of tarpaulins which we loaded into our scows after we went through a lot of wood and broken timbers and so forth and so on.

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Recross Examination by Mr. Atkins:

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The Commissioner: Mr. Meyer, at whose request did the United States Engineers commence to remove the wrecks from the channel? Or if not a request, was it done by decision of the United States Engineers independent of any request?

The Witness: I could not answer you that. When the scows are abandoned, which I believe they were, the Corps of Engineers undertook to remove them from the channel.

The Commissioner: So far as you know, it was not done by anyone outside of the request of the United States Engineers?

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The Witness: No.

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FRANKLIN H. HABER, called as a witness in behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Cross Examination by Mr. Atkins:

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Q. Is it a fact that you did request bids for the wet wheat taken from the respective barges? A. Yes, sir.

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Q. Did you sell to the highest bidder? A. I believe so.

Mr. Taylor: I object to this.

Mr. Atkins: I am asking you.

The Commissioner: What is the basis of your objection, Mr. Taylor?

Mr. Taylor: Let's find out how it was done and what was done and I still object on the ground, of course, that this is not evidence, of course, of the value, as obviously it is not, but I have no objection to his telling us who they inquired from, when they inquired from and who they got responses from.

The Commissioner: Objection sustained, and I will ask the witness, did you advertise for bids.

The Witness: I could not answer. That was handled by Mr. Brennan in the New York office. I do have three copies here of three different bids.

The Commissioner: All right, I will let Mr. Atkins continue his examination. He has three copies of bids.

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By Mr. Atkins:

Q. Will you state the amount of such bids?

Mr. Taylor: I object to the amount.

The Commissioner: Overruled.

Mr. Taylor: I would like to state on the record that I object to any evidence as to the amount offered for this wheat, because it is not in the regular course of business; no evidence of actual value; it is a sale of distressed merchandise.

Mr. Atkins: Now, may I answer here, I think this is an opportune time, may I be permitted—

The Commissioner: Go ahead.

Mr. Atkins: (Continuing) —to speak my little piece.

Mr. Taylor: Is it necessary?

Mr. Atkins: Now, you are not the Commissioner.

The Commissioner: Just a minute, gentlemen, the objection was overruled. The witness will be allowed to answer. If you have something to say with relation to Mr. Taylor's objection—

Mr. Atkins: The objection has been overruled.

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The Commissioner: Yes.

Mr. Atkins: That is all right, then.

The Commissioner: You may answer.

Mr. Taylor: This is what I want to call to your attention, Mr. Atkins—

Mr. Atkins: Never mind. I am not interested.

The Witness: Here is a letter addressed to the New York office, District Engineer: "Forwarded herewith are three copies received for sale of wheat to be recovered in salvage operations by US Engineers and removal of sunken scows MARION O'NEILL and MAE LOWERY from Hudson River, Albany." Signed by Ambrose F. Brennan. And the three copies are attached.

Mr. Taylor: Does that answer the question?

Mr. Atkins: No. The amount.

The Commissioner: The question was as to the amount.

The Witness: The first one is from Cargo Recovery Corporation. "We bid ten cents per bushel measured in accordance with paragraph 1, with our equipment, after cargo has been dumped"—

Mr. Taylor: My objection to this line of questioning—

The Commissioner: Is on the record.

Mr. Taylor: (Continuing) —is on the record.

The Witness: The next one is by telegram from Millhurst Mills, Freehold, New Jersey, "We bid ten cents per bushel wet wheat containing 2154.42 cubic feet bushel loaded into grain barges New York." Did you want me to complete both these telegrams?

The Commissioner: Just the amount of the three separate bids.

The Witness: Yes. One has "our check $380 reduction 10 per cent deposit," ten cents was the bid. This one is ten and total quantity 19,000 wheat bushels. This one is from Universal Grain Company regarding 2145 based on 19,000 bushels loaded on

scows furnished by us—2150 and four-tenths cubic bushels. You are to advise us if we are the successful bidder and we will send you a certified check.

The Commissioner: What was the amount of their bid?

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The Witness: $2945, based on 19,000 bushels.

By Mr. Atkins:

Q. Twenty-nine cents? A. $2,945.

Q. $2,945. And to whom did you sell? A. Universal Grain.

Q. You accepted the bid of Universal Grain? A. Universal Grain Company.

Q. Does the Army Engineers, as a bookkeeping proposition, or for any other purpose, set up a value for the cost of the operation which Mr. Meyer has described? A. I wish you would be more explicit on the question.

Q. For example, for a period of a number of days you used derrick 1. Now, does the Government make any bookkeeping or appraisal cost of the use of the derrick? A. Let me answer it this way.

Q. Yes. A. Any job—no, any is not correct—most jobs we make an estimate of cost before we do a job. I think that is what you are trying to ask me.

Q. Well, the obligation—that is the question,—did you not consider that the obligation to clear the barges from the

—221—

channel, having been abandoned, was on the Government? A. I don't follow that question.

Q. Well, there were two wrecks that obstructed the channel. A. Correct.

Q. Is that correct? A. That's right.

Franklin H. Haber—for Bouchard—Cross

Q. Now, the purpose of removing the barges was to clear the channel? A. That's right.

Q. For navigation; is that not correct? A. That is correct.

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Q. Now, I am asking whether the Government would keep any record of the expense, that is, any charge with respect to the use of derrick No. 1? A. We did keep a record of the cost of this job.

Q. Could you state what the cost was?

Mr. Taylor: I object to it as no evidence of what an ordinary salver—what it would cost an ordinary salver.

The Commissioner: I overrule the objection. The witness may answer.

The Witness: This again is on that note, that Mr. Taylor called me and I got this information for him. I put this note in here that the cost amounted to, grain operation removal cost, $9,980.43.

By Mr. Atkins:

Q. Did that involve the—was there an item in that cost for the removal of the barges, where they were located, as you testified to, at different locations? A. That includes removal of the grain and removal of the barges from the river to shoreward of the channel.

Q. And did the barges remain there? A. They were

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removed later by contract.

Q. And can you tell us the amount of such contract?

Mr. Taylor: I also object to this as not binding and no evidence of what it costs a commercial salver.

The Commissioner: Overruled.

The Witness: The amount of the contract was $7,771.

By Mr. Atkins:

Q. $7,771. And who did the removing? A. Island Marine Contracting Corporation, Box 297, New Rochelle, New York.

Mr. Atkins: That is all.

The Commissioner: Mr. Taylor?

Redirect Examination by Mr. Taylor:

Q. Mr. Haber, would you please look at your files and see whether there is an earlier telegram from Mr. Lowery. My recollection is that it was September 25.

Mr. Atkins: May I interrupt?

A. Well, there is a copy of a telegram here dated 25 September 1953, addressed to U.S. Engineers, Custom House, Post Office Building, Albany, New York. "I as owner of barges MARION O'NEILL and MAE LOWERY sunk Hudson River Albany herewith notify you of the abandonment thereof. Frank A. Lowery."

Q. Can you tell us the date?

The Commissioner: What is the date of that telegram?

The Witness: September 25, 1953.

Eugene C. Meyer—for Pouchard—Redirect

By Mr. Taylor:

Q. Is there anything there to indicate the time that that telegram was sent? A. Five twenty-six a. m.

Q. Of September 25. Mr. Haber, will you look at your records and see—strike that out. So, it seems that Mr. Lowery abandoned the barges on the early morning of September 25. A. There is a copy of that telegram to that effect in here.

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Q. Yes. Now, you say that there were some bids for the purchase of this cargo. Now, when did you make a request for bids and when were the bids closed? A. This is dated 28 September, 1953. This is a copy of—there is no signature on it. But it does say here "Sealed bids will be received in the Albany sub-office, New York, District Corps of Engineers, Room 322, Federal Building, Albany, New York until ten a. m. eastern standard time 29 September, 1953."

Q. In other words, bidders have until ten o'clock September 29th? A. And then publicly opened for the purpose of recovering sunken wheat contained in the sunken barges MARION O'NEILL and MAE LOWERY.

Q. So that the bids were to be filed by September 29 at ten a. m.? A. That is correct.

Q. And when did you ask for bids? A. This is dated—it is not an official file by the way—official records are in New York. These are copies. This is dated September 28, 1953.

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Eugene C. Meyer—for Bouchard—Recross

Recross Examination by Mr. Atkins:

Q. I am directing your attention to the contract cost of $7,771. A. That's right.

Q. For the removal of the barges to the shore, to the place where they ultimately were put. Now, I would like to have you assume that after the abandonment of the barges by the owner of the barges, the owner of the cargo then came in and, in effect, said we would like to conduct a salvage operation to recover as much grain as we can for the purpose of salvaging grain. Now, would you have permitted such an operation in the river by the use of a derrick, as I say,

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that would clam out grain into barges alongside without requiring the cargo salver to place the barges in a—dispose of the barges or put them in a location agreeable to the Army Engineers? Do you follow my question? A. It is quite a lengthy question.

Q. Yes. A. But the decision would rest entirely with the District Engineer. I would not decide any such thing.

Q. Well, can it not be assumed that when the Government spends $7,771, that the barges have not been put in a place agreeable to the Army Engineers?

Mr. Taylor: I object to this.

The Commissioner: I will sustain it.

Mr. Atkins: As to form.

The Commissioner: I sustain that objection. The Government didn't spend the seven thousand dollars—$7,771, to remove the wrecks from the shore. The Government received that much on contract for that removal.

The Witness: They paid the contractor that for the removal.

The Commissioner: They paid the contractor that

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for the removal?

The Witness: Yes, less a penalty.

By Mr. Atkins:

Q. In other words, you set a price of $9,980, plus the contract price of $7,771, totalling $17,751 and some odd cents, which represents the cost of clearing, of the entire operation to the point where the cargo, the barges have been disposed of, the cargo had been dumped, cargo has been delivered to, on board barges of the buyer of the wet grain? A. That cost includes removal of the grain and the barges from the river.

Q. That is the total amount of $17,751.? A. Correct. And forty-three cents.

Q. Forty-three cents. That is all.

Re-Redirect Examination by Mr. Taylor:

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Q. Where were the barges removed to? A. To the East Shore of the River.

Q. From— A. You mean the final disposal. As I recall they were taken down river, torn apart and burned up.

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